HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition no. 239 (S/B) 2006

Smt. Malti Vijay W/o Sri V.K. Goswami,
Resident of Rajkiya Ashram Padhyati Vidhyalaya,
Gularbhoj, District U.S. Nagar. ----------Petitioner.

Vs.

1. Nideshak, Janjati Kalyan Nideshalaya,
   Uttaranchal, Dehradun,
2. Pradhanacharya, Rajkiya Ashram Padhyati Vidhyalaya,
   Gothi, District Pithoragarh,
3. Zila Samaj Kalyan Adhikari, U.S. Nagar,
4. Zila Samaj Kalyan Adhikari, Pithoragarh,
5. District Magistrate, U.S. Nagar,
6. State of Uttaranchal through its Secretary,
   Deptt. Of Samaj Kalyan, Dehradun,
7. Sri V.K. Srivastava, Adhikshak,
   Rajkiya Audhyogik Prashiksha Sansthan,
   Gularbhooj, District U.S. Nagar,
8. Upma Shukla, Zila Samaj Kalyan Adhikari,
   U.S. Nagar. -------Respondents.

Mr. Siddhartha Shah, Adv. for the petitioner,
Sri K.P. Upadhyay, learned Standing Counsel for the State/respondents nos. 1 to 6.

Coram:-Hon'ble M.M. Ghildiyal, J.
Hon'ble B.S. Verma, J.

P.C.:-

Heard Sri Siddhartha Shah, learned counsel for the petitioner and learned standing Counsel for the State/ respondents nos. 1 & 6.

2. By the present writ petition, the petitioner has prayed for the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorari to quash the transfer order dated

05.07.2006 passed by respondent no. 1 (annexure no. 10),

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to relieve the petitioner from Rajkiya Ashram Paddhyati Vidhyalaya, Gularbhoj & allow her to continue to work there,

(iii) Pass such order or direction as the Court may deem fit and proper under the circumstances of the case,

3. Vide order dated 5th July 2006 passed by the Director, Directorate of Tribal Welfare, Uttaranchal/ respondents no. 1, the petitioner who was working as Officiating Principal at Govt. Ashram Paddhyati (Balika) Vidhyalaya, Golarbhoj, district U.S. Nagar has been transferred to Govt. Ashram Paddhyati Vidhyalaya, Gothi, district Pithoragarh. The petitioner has challenged the transfer order on various grounds. Firstly, the petitioner has been transferred on administrative grounds and while making transfer on administrative grounds; the respondents have not followed the guidelines stipulated in the transfer policy issued by the State of Uttaranchal. The policy, as held by Hon'ble the Apex Court, does not have statutory force and, in our opinion the respondents cannot be compelled to follow the guidelines stipulated in the policy. In any case, since the guidelines have been issued itself by the Govt., it is expected from the Govt. to follow the guidelines as far as possible while making transfers.

4. The second ground of assailing the impugned order placed before us is that there is no complaint against the petitioner on behalf of the guardians or by the students; the

petitioner has performed her extreme in extracting remarkable result during her tenure; the complaints on which the Govt. has taken initiatives for her transfer were received from local representatives and, as such, the complaints are entirely motivated. The averment made in the writ petition that the complaints are exclusively motivated, cannot be believed. In our view, the local representations have vital role in smooth functioning of any Govt. Institution and it is the responsibility of the local representatives to make complaints against such officials, without discrimination, whose creativity is doubted. The local representatives are duty bound to make such type of complaints.

5. It is further pleaded by learned counsel for the petitioner that the respondent no. 7 has been assigned additional charge of the post held by the petitioner at Gularbhoj who is not competent to be posted as Superintendent, Govt. Ashram Paddyati (Balika) Vidhyalaya, Golarbhoj, district U.S. Nagar. It is expected from respondent no. 1 to look into the matter and in case, the respondent no. 7 is not competent or suitable for the post of Superintendent, the respondent no. 1 will reconsider the matter.

6. One other ground for assailing the impugned order pleaded before us is that according to the policy issued by the State in case, the husband and wife are Govt. servants they should be accommodated as far as possible at one place. The policy itself indicates that the spouse may be accommodated as far as possible at one place. Learned counsel for the petitioner has further submitted that the order itself entails stigma. The impugned transfer order been passed on administrative

grounds, thus the contention of learned counsel for the petitioner is not sustainable. Further, any transfer order made on the basis of complaints, cannot be said to be stigmatic.

7. It has been further contended that no person has come to replace the petitioner at her present place of posting. But it is not essential prior making transfers on administrative grounds.

8. In any case, the petitioner has made representation to the respondent no. 1 on 12.07.2006, which is annexure no. 15 to the writ petition and it is expected from the respondent no. 1 to take decision on her representation within a period of two weeks from the date of receipt of a certified copy of this order. While deciding the representation, the respondent shall pass speaking order.

9. With these directions, the writ petition is finally disposed of. No order as to costs.

(B.S. Verma, J.) **(M.M. Ghildiyal, J.)**

July 28, 2006:
NCM: